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VIA FACSIMILE AND U.S. MAIL

Kenneth D. Landau
Assistant Executive Officer
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive
Rancho Cordova, California 95670

Re: *Proposed Resolution To Amend Conditional Waivers Of Waste Discharge Requirements For Discharges From Irrigated Lands Within The Central Valley Region("Proposed Resolution")*

Dear Mr. Landau:

We are writing to comment on the Proposed Resolution. In particular, we urge you to delete the second paragraph of Section 2 of the Proposed Resolution in its entirety. That paragraph states:

The Conditional Waivers include Receiving Water Limitations that implement the applicable water quality objectives and water quality standard for all surface waters of the state within the Central Valley Region. Because agricultural dominated waterways and construction agricultural drains are waters of the state, the Receiving Water Limitations in the Conditional Waivers apply to them.

This language is inconsistent with the Waivers and inconsistent with the position the Central Board took in the matter captioned, *California Farm Bureau Federation v. State Water Resources Control Board*, No. 04CS00264 (Sacramento Co. Super. Ct.) (the "Lawsuit"). We represented petitioner California Farm Bureau Federation in connection with that Lawsuit.

In these comments, we set forth relevant portions of the brief we submitted in the Lawsuit, the opposition brief filed by the California Attorney General's Office on behalf of the

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State Water Board and the Central Valley Board, the decision of the Sacramento County Superior Court, and the Proposed Resolution. We then suggest changes to the Proposed Resolution.

Brief Submitted in the Lawsuit

In October 2004, we submitted our brief in the Lawsuit. Section IV(B)(2) of that brief stated as follows:

The conditional waivers contain a requirement that farmers must not violate "any applicable water quality objective in the Regional Board's Basin Plans." SWB-015942, 015981. More than a dozen Water Quality Objectives have been taken directly from the Basin Plans and expressly listed in the conditional waivers. *Id.* at 015970-75. These are the Water Quality Objectives that specifically pertain to beneficial uses for the 96 stream segments that the Regional Water Board actually designated in the 1975 Basin Plan. The conditional waivers seek to apply these Water Quality Objectives at one fell stroke to every stream segment in the Central Valley into which run-off from irrigated land flows. The apparent basis for this action is the application of the Tributary Rule. The State Water Board upheld these requirements.

However, at about the same time the State Water Board was upholding these requirements, it was taking a diametrically opposite position in litigation over a permit appeal. RJN Exh. Q (*In the Matter of Vacaville's Easterly Wastewater Treatment Plant*, No. WQO 2002-0015 (SWRCB Oct. 3, 2002) 2002 Cal. Env. Lexis 29, *writ pending sub nom. City of Vacaville v. State Water Resources Control Board et al.*, No. CIV MSN03-0956 (Contra Costa Cty. Super. Ct.)). In the Vacaville litigation, the State Water Board has taken the position that beneficial uses cannot be applied by "rote" to tributaries, but must be applied "on a case-by-case basis" based on a careful examination as to whether the beneficial uses are appropriate. (Footnote omitted.)

The City of Vacaville owns a wastewater treatment plant that discharges to Old Alamo Creek, "an ephemeral stream that is effluent-dominated." RJN Exh. Q at 1. As the State Water Board explains, "in the arid west, natural stream flow may be very low or intermittent due to infrequent storm events and the lack of recharge from groundwater Frequently, public agencies discharge treated sewage effluent into these normally dry streams. As a result, stream flow during all or part of the year can be dominated by treated effluent. These streams [are] called . . . effluent-dominated [waterbodies] (EDWs)." *Id.* at 2.

